

112TH CONGRESS  
1ST SESSION

# S. 1002

To prohibit theft of medical products, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 16, 2011

Mr. SCHUMER (for himself, Mr. KYL, Ms. KLOBUCHAR, Mr. BROWN of Ohio, Mr. WHITEHOUSE, Mr. SESSIONS, Mr. GRAHAM, Mr. COONS, Mr. BENNET, Mr. LUGAR, Mr. NELSON of Florida, Mr. CASEY, Mr. BLUMENTHAL, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit theft of medical products, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Strengthening and Fo-  
5       cusing Enforcement to Deter Organized Stealing and En-  
6       hance Safety Act of 2011” or the “SAFE DOSES Act”.

7       **SEC. 2. THEFT OF MEDICAL PRODUCTS.**

8       (a) IN GENERAL.—Chapter 31 of title 18, United  
9       States Code, is amended by adding at the end the fol-  
10      lowing:

1 **“§ 670. Theft of medical products**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘biological product’ has the mean-  
4 ing given the term in section 351 of the Public  
5 Health Service Act (42 U.S.C. 262);

6 “(2) the terms ‘device’, ‘drug’, ‘infant formula’,  
7 and ‘labeling’ have the meanings given those terms  
8 in section 201 of the Federal Food, Drug, and Cos-  
9 metic Act (21 U.S.C. 321);

10 “(3) the term ‘medical food’ has the meaning  
11 given the term in section 5(b) of the Orphan Drug  
12 Act (21 U.S.C. 360ee(b)); and

13 “(4) the term ‘medical product’ means a drug,  
14 biological product, device, medical food, or infant  
15 formula that—

16 “(A) is being stored for transportation, or  
17 is being or has been transported, shipped, or re-  
18 ceived; and

19 “(B) has not yet been made available for  
20 retail purchase by a customer at the time of the  
21 relevant conduct described in subsection (b).

22 “(b) OFFENSES.—It shall be unlawful, using any  
23 means or facility of interstate or foreign commerce, or in  
24 or affecting interstate or foreign commerce, to know-  
25 ingly—

1           “(1) steal, take without authorization, embezzle,  
2           carry away, or obtain by fraud or deception a med-  
3           ical product, or attempt or conspire to do so;

4           “(2) transport, handle, traffic in, or store a sto-  
5           len medical product, or attempt or conspire to do so;  
6           or

7           “(3) participate, in any way, in a scheme to  
8           alter, forge, or falsify the labeling or documentation  
9           (including documentation relating to origination or  
10          shipping) of a stolen or expired medical product.

11          “(c) PENALTIES.—

12           “(1) IN GENERAL.—Any person that violates  
13          subsection (b)—

14           “(A) if the value of the medical product or  
15          products is less than \$5,000, shall be fined  
16          under this title, imprisoned for not more than  
17          3 years, or both; and

18           “(B) subject to paragraph (2), for any  
19          other violation, shall be fined under this title,  
20          imprisoned for not more than 20 years, or both.

21           “(2) ADDITIONAL FACTORS.—Any person that  
22          violates subsection (b) shall be fined under this title  
23          and imprisoned for not less than 1 year nor more  
24          than 20 years if—

1           “(A) the value of the medical product or  
2 products is not less than \$5,000; and

3           “(B) the—

4               “(i) person—

5                   “(I) buys, or otherwise obtains, a  
6 medical product, knowing or with  
7 reckless disregard as to whether the  
8 medical product is expired or has been  
9 stolen, with the intent to sell or dis-  
10 tribute the medical product;

11                   “(II) sells, or distributes, a med-  
12 ical product, knowing or with reckless  
13 disregard as to whether the medical  
14 product is expired or has been stolen;  
15 or

16                   “(III) at the time of the violation  
17 is employed by, or is an agent of, an  
18 organization in the supply chain from  
19 which the stolen or expired medical  
20 products were removed, including a  
21 manufacturer, wholesaler, repacker,  
22 own-label distributor, private-label dis-  
23 tributor, jobber, broker, drug trader,  
24 transportation company, hospital,  
25 pharmacy, or security company; or

1 “(ii) violation—

2 “(I) involves the use of violence,  
3 force, or a threat of violence or force;

4 “(II) involves the use of a deadly  
5 weapon;

6 “(III) results in injury, including  
7 the injury of deprivation of treatment,  
8 or death caused by ingestion or use of  
9 a stolen or expired medical product;  
10 or

11 “(IV) is the second or subsequent  
12 offense under subsection (b) com-  
13 mitted by the person.

14 “(3) CIVIL PENALTIES.—

15 “(A) IN GENERAL.—The Attorney General  
16 may bring a civil action in an appropriate  
17 United States district court against any person  
18 that engages in conduct that violates subsection  
19 (b).

20 “(B) PENALTY.—In a civil action brought  
21 under subparagraph (A) the court may impose  
22 a civil penalty in an amount not more than the  
23 greater of 3 times the economic loss attrib-  
24 utable to the violation or \$1,000,000.”.

1 (b) CIVIL FORFEITURE.—Section 981(a)(1)(C) of  
 2 title 18, United States Code, is amended by inserting  
 3 “670,” after “657,”.

4 (c) TECHNICAL AND CONFORMING AMENDMENT.—  
 5 The table of sections for chapter 31 of title 18, United  
 6 States Code, is amended by adding after the item relating  
 7 to section 669 the following:

“670. Theft of medical products.”.

8 **SEC. 3. PENALTIES FOR THEFT-RELATED OFFENSES.**

9 (a) INTERSTATE OR FOREIGN SHIPMENTS BY CAR-  
 10 RIER.—Section 659 of title 18, United States Code, is  
 11 amended in the fifth undesignated paragraph, by striking  
 12 “10 years” and inserting “20 years”.

13 (b) RACKETEERING.—Chapter 95 of title 18, United  
 14 States Code, is amended—

15 (1) in section 1952(a)(3)(A), by striking “5  
 16 years” and inserting “20 years”; and

17 (2) in section 1957(b)(1), by striking “ten  
 18 years” and inserting “20 years”.

19 (c) BREAKING OR ENTERING CARRIER FACILI-  
 20 TIES.—Section 2117 of title 18, United States Code, is  
 21 amended in the first undesignated paragraph by striking  
 22 “ten years” and inserting “20 years”.

23 (d) STOLEN PROPERTY.—Chapter 113 of title 18,  
 24 United States Code, is amended—

1           (1) in section 2314, in the sixth undesignated  
2       paragraph, by striking “ten years” and inserting  
3       “20 years”; and

4           (2) in section 2315, in the fourth undesignated  
5       paragraph, by striking “ten years” and inserting  
6       “20 years”.

7   **SEC. 4. AMENDMENT TO RICO.**

8       Section 1961(1)(B) of title 18, United States Code,  
9   is amended by inserting “, section 670 (relating to theft  
10 of medical products)” before “, sections 891”.

11 **SEC. 5. AMENDMENT TO TITLE III.**

12       Section 2516(1) of title 18, United States Code, is  
13 amended—

14           (1) by redesignating paragraph (s) as para-  
15       graph (t); and

16           (2) by inserting after paragraph (r) the fol-  
17       lowing:

18           “(s) any violation of section 670 (relating to  
19       theft of medical products).”.

20 **SEC. 6. AMENDMENT TO ORDER OF RESTITUTION.**

21       Section 3663A(c)(1)(A) of title 18, United States  
22 Code, is amended—

23           (1) in clause (ii), by striking “or” at the end;

24           (2) in clause (iii), by striking “and” at the end  
25       and inserting “or”; and

1 (3) by adding at the end the following:

2 “(iv) an offense under section 670 (relat-  
3 ing to theft of medical products); and”.

4 **SEC. 7. DIRECTIVE TO UNITED STATES SENTENCING COM-**  
5 **MISSION.**

6 Pursuant to its authority under section 994 of title  
7 28, United States Code, and in accordance with this Act,  
8 the United States Sentencing Commission shall review  
9 and, if appropriate, amend the Federal Sentencing Guide-  
10 lines and policy statements applicable to a person con-  
11 victed of an offense under section 2118 of title 18, United  
12 States Code, section 670 of title 18, United States Code,  
13 as added by this Act, or other section of title 18 of the  
14 United States Code, amended by this Act.

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